

Manager Fact Sheet: Elected Officials and Personal Appointed Staff

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This fact sheet provides assistance to state human resource professionals and managers who work with elected officials and personal appointed staff within the executive branch. These individuals may be excluded from human resource policies located on the Montana Operations Manual (MOM) as well as specific state and federal regulations. This fact sheet will discuss the basic requirements for determining who qualifies as personal staff and the corresponding exclusions under policy and law.

Federal Law Exclusions:

The Fair Labor Standards Act (FLSA):

- sets minimum wage levels;
- establishes requirements for overtime pay;
- establishes requirements for recordkeeping;
- sets equal pay for equal work; and
- restricts child labor.

The FLSA excludes elected public officials, their immediate advisors and certain individuals they appoint from all provisions of the FLSA.

Appointed employees are excluded from the FLSA as “personal staff.” By definition, these individuals are employees of public agencies who are not subject to the civil service laws of the state, political subdivision, or agency which employs them and who are:

- holders of public elective office;
- members of the office holder’s personal staff;
- appointed by elected officials to policy making positions; or
- immediate advisors to elected officials with respect to the constitutional or legal powers of the officeholder.

The FLSA further defines “personal staff” exclusion as only those persons who are under the direct supervision of the elected official and have regular contact with the official. The term typically does not include individuals directly supervised by someone other than the elected official even though the official may have personally selected them.

Because of the limitations set forth for “personal staff” exclusions, we advise agencies use caution when declaring any position as “personal staff” if there is doubt as to whether the position qualifies for that status.

Employees who do not meet the requirements for an exclusion as “personal staff” may still qualify for an exemption under the FLSA. A qualifying exemption such as executive, administrative or professional only exempts employees from the minimum wage and overtime requirements. All other provisions of the FLSA are still required.

Another federal law from which elected officials and “personal staff” are excluded is the Family Medical Leave Act (FMLA). Any employee who qualifies for exclusion under the FLSA is also excluded from guaranteed job protected leave under the FMLA.

State Law Exclusions:

Elected officials include the governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and the state auditor. “Personal staff” are defined in state statute as those positions occupied by employees appointed by the elected officials or by the public service commission as a whole.

Both elected officials and their appointed personal staff are excluded from Title 2, Chapter 18, Parts 1 through 3 and 10 of the Montana Code Annotated (MCA). State statute specifically excludes these individuals from:

- general human resource policy setting authority of the Department of Administration;
- salary schedules, the broadband pay plan and the classification system;
- longevity allowances;
- hiring preferences for residents of Indian reservations for jobs within reservations;
- permanent employment status;
- job-sharing and telework positions as defined in 2-18-107 & 120, MCA; and

Federal or State Exclusions:

Elected officials are always excluded from both the FLSA and applicable state laws. However, personal appointed staff may not qualify for exclusions under either the federal and state statute.

Because it is more difficult to exclude employees under the FLSA, some personal appointed staff may not be excluded from federal regulations, but may be excluded from applicable state laws and policies.

Each agency should evaluate the duties and reporting status of each personal appointed employee on an individual basis. If it is determined that the employee only qualifies for state exclusion, you will need to designate the employee as exempt or non-exempt under the FLSA and apply the federal regulations accordingly.

Policy Exclusions:

As mentioned earlier, elected officials and their appointed personal staff are excluded from state policies outlined in MOM. State statute may extend leave, retirement and other employee benefits to these individuals; however, it also exempts them from the general policy setting authority of the Department of Administration.

Elected officials may choose to adopt some or all of the human resource (MOM) policies in an effort to maintain consistency within their agency, however, this is not required. If MOM policies are not adopted, it is a best practice to establish some form of written policies for personal appointed staff and elected officials.

Statutory Benefits:

Elected officials are not granted leave benefits under state statute. The limited list of benefits guaranteed by state law to elected officials include:

- Public Employee Retirement System
- Employee Incentive Program
- State Group Insurance
- Voluntary Employees' Beneficiary Association (VEBA) benefits

Benefits statutorily guaranteed by state law to personal appointed staff include:

- Public Employee Retirement System
- Holidays
- Annual vacation leave
- Parental leave
- Military leave
- Sick leave
- Jury duty
- Employee Incentive Program
- State Group Insurance
- Voluntary Employees' Beneficiary Association (VEBA) benefits

Summary:

Elected officials are excluded from both federal and state laws as previously discussed.

Personal appointed staff may qualify for exclusions under the FLSA or state law or both. If excluded from both, these individuals:

- are not required to be paid minimum wage or overtime;
- are not guaranteed job protected leave under the Family and Medical Leave Act;
- need not be hired through a competitive process;
- do not complete a probationary period,
- have no MOM policy grievance rights; and
- are not subject to the human resource policies established by the Department of Administration.

To state it simply, these employees serve at the pleasure of the elected official and are entitled to employee benefits only as extended by statute.



State Human Resources Division
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